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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,907	07/03/2003	Alain L. De La Motte	IGR 306C	7201
23581	7590	12/29/2005	EXAMINER	
KOLISCH HARTWELL, P.C. 200 PACIFIC BUILDING 520 SW YAMHILL STREET PORTLAND, OR 97204			KIM, NICHOLAS J	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/613,907	MOTTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nicholas Kim	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02 February 2004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

### **Content of Specification**

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.

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- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.

Or alternatively, Reference to a "Microfiche Appendix": See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.

- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their

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exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.

- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

1. Appendix: 37 CFR 1.96 deals with appendices in Patent Applications and reads in part:

**§ 1.96 Submission of computer program listings.**

- (a) *General*. Descriptions of the operation and general content of computer program listings should appear in the description portion of the specification. A computer program listing for the purpose of this section is defined as a printout that lists in appropriate sequence the instructions, routines, and other contents of a program for a computer. The program listing may be either in machine or machine-independent (object or source) language which will cause a computer to perform a desired procedure or task such as solve a problem, regulate the flow of work in a computer, or control or monitor events. Computer program listings may be submitted in patent applications as set forth in paragraphs (b) and (c) of this section.
- (b) *Material which will be printed in the patent*: If the computer program listing is contained in 300 lines or fewer, with each line of 72 characters or fewer, it may be submitted either as drawings or as part of the specification.
  - (1) *Drawings*. If the listing is submitted as drawings, it must be submitted in the manner and complying with the requirements for drawings as provided in § 1.84. At least one figure numeral is required on each sheet of drawing.
  - (2) *Specification*.
    - (i) If the listing is submitted as part of the specification, it must be submitted in accordance with the provisions of § 1.52.

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(ii) Any listing having more than 60 lines of code that is submitted as part of the specification must be positioned at the end of the description but before the claims. Any amendment must be made by way of submission of a substitute sheet.

- (c) *As an appendix which will not be printed:* Any computer program listing may, and any computer program listing having over 300 lines (up to 72 characters per line) must, be submitted on a compact disc in compliance with § 1.52(e). A compact disc containing such a computer program listing is to be referred to as a "computer program listing appendix." The "computer program listing appendix" will not be part of the printed patent. The specification must include a reference to the "computer program listing appendix" at the location indicated in § 1.77(b)(5).

(1) Multiple computer program listings for a single application may be placed on a single compact disc. Multiple compact discs may be submitted for a single application if necessary. A separate compact disc is required for each application containing a computer program listing that must be submitted on a "computer program listing appendix."

(2) The "computer program listing appendix" must be submitted on a compact disc that complies with § 1.52(e) and the following specifications (no other format shall be allowed):

- (i) Computer Compatibility: IBM PC/XT/ AT, or compatibles, or Apple Macintosh;
- (ii) Operating System Compatibility: MSDOS, MS-Windows, Unix, or Macintosh;
- (iii) Line Terminator: ASCII Carriage Return plus ASCII Line Feed;
- (iv) Control Codes: the data must not be dependent on control characters or codes which are not defined in the ASCII character set; and
- (v) Compression: uncompressed data.

2. The material in each appendix apparently comes from published documents which may be publicly available. The Applicants may, in each of the above instances, remove references to the appendices and substitute in its place a reference to the published documents by including the name and any pertinent publication information (including version number relied upon) and refer to the pages of the published documents. Note, this should only be done if the material is nonessential subject matter because essential subject matter from non-patent literature may not be incorporated by reference. See MPEP 608.01(p) which reads in part:

An application as filed must be complete in itself in order to comply with 35 U.S.C. 112. Material nevertheless may be incorporated by reference, *Ex parte Schwarze*, 151 USPQ 426 (Bd. App. 1966). An application for a patent when filed may incorporate "essential material" by reference to (1) a U.S. patent, >or< (2) a U.S. patent application publication, \*\*>which patent or patent application publication does not itself incorporate such essential material by reference. See 37 CFR 1.57(c). Prior to October 21, 2004,

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Office policy also permitted incorporation by reference to a pending U.S. application\*\*. “Essential material” is defined in 37 CFR 1.57(c) as that which is necessary to (1) \*\*provide a written description of the claimed invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out the invention as required by the first paragraph of 35 U.S.C. 112, (2) describe the claimed invention in terms that particularly point out and distinctly claim the invention as required by the second paragraph of 35 U.S.C. 112, or (3) describe the structure, material, or acts that correspond to a claimed means or step for performing a specified function as required by the sixth paragraph of 35 U.S.C. 112. In any application that is to issue as a U.S. patent, essential material may only be incorporated by reference to a U.S. patent or patent application publication. The practice of permitting incorporation by reference of material from unpublished applications in which the issue fee was paid was discontinued by rule on October 21, 2004.

Other material (“nonessential subject matter”) may be incorporated by reference to (1) patents or applications published by the United States or foreign countries or regional patent offices, (2) prior and concurrently filed, commonly owned U.S. applications, or (3) non-patent publications \*\*. Nonessential subject matter is subject matter referred to for purposes of indicating the background of the invention or illustrating the state of the art.

3. It is also possible for Applicants to add any of this material to the pertinent sections of the specification, however any material that is added must not include new matter. Applicants should be especially careful if they decide to amend the specification to include any of the material in the application manual since new matter may not be added to the specification.
4. Finally, regardless of what Applicants should decide to do regarding the above matter, since these documents are presumably publicly available, Applicants should provide the examiner with pertinent information concerning these references (i.e., title, publication information, date of publication, etc.) because the references themselves could possibly constitute prior art which must be evaluated in making a patentability determination.
5. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-3** are rejected under 35 U.S.C. 102(e) as being anticipated by Giovannoli (U.S. Patent No. 5,842,178).

7. A virtual marketplace for negotiating sales of bulk, non-commodity food products, comprising: a plurality of remote buyers and suppliers of bulk, non-commodity food products interconnected via an international computer network (FIG. 1, "vendors"); and on a computer connected to the network, software operable to receive, via the network, an RFQ for a food product from a buyer (Col. 2, ℓ. 39 – Col. 3, ℓ. 25), present, via the network, the RFQ to at least some of the suppliers (Col. 2, ℓ. 39 – Col. 3, ℓ. 25), receive, via the network, one or more quotes for the food product from one or more of the suppliers (Col. 2, ℓ. 39 – Col. 3, ℓ. 25), and present, via the network, at least one of the quotes to the buyer (Col. 2, ℓ. 39 – Col. 3, ℓ. 25).

8. A method of facilitating on-line transactions involving the sale of a food product having a value to a buyer determined by objective characteristics and subjective characteristics, the method comprising: establishing a standardized rating system effective to objectively describe relative evaluations of one or more subjective characteristics of the food product (Col. 4, ℓ. 15-29); evaluating one or more subjective characteristics of the food product in accordance with the rating system (FIG. 2A); applying a rating from said rating system to each subjective characteristic evaluated (FIG. 2A); and transmitting, via a computer network, at least one of an RFQ for the food product from a buyer, where the RFQ specifies a desired subjective characteristic of the food product according to the corresponding rating of the rating system (FIG. 2A), or a quote for the food product from a supplier, where the quote specifies a subjective characteristic of the food product according to the rating applied to the food product (FIG. 2B).

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9. A method of facilitating a transaction involving the purchase of bulk, non-commodity food products, comprising: displaying, via a computer network system, a plurality of bulk, non-commodity food products to a buyer (Col. 2, l. 39 – Col. 3, l. 25); receiving, via a computer network system, a selection identifying one of the food products from the buyer (Col. 2, l. 39 – Col. 3, l. 25); displaying, via a computer network system, a list of food-product-quality characteristics corresponding to the selected food product (Col. 2, l. 39 – Col. 3, l. 25); receiving, via a computer network system, a selection from the buyer identifying one or more food-product-quality characteristics from the list (Col. 2, l. 39 – Col. 3, l. 25); and presenting, via a computer network system, an RFQ specifying the selected food product and the selected food-product-quality characteristics to a plurality of suppliers (Col. 2, l. 39 – Col. 3, l. 25).

### *Conclusion*

10. This is a continuation of applicant's earlier Application No. 09/364,711. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to Applicants' disclosure. Giovannoli (U.S. Patent No. 5,758,328) describes a computerized quotation system and method for vendors and buyers. Mandler et al. (U.S. Patent No. 5,732,400) describes a system and method for enabling on-line transactions among sellers and buyers. Chong (U.S. Patent No. 5,175,684) describes an automatic translation system including an automatic routing system. Johnson et al. (U.S. Patent No. 6,023,683) describes an electronic sourcing system and method including a catalog database of data including product information and generation of a purchase order for desired items. Webber et al. (U.S. Patent No. 6,009,413) describes a system for real time shopping enabling access to a variety of information regarding products in real time. Gardner et al. (U.S. Patent No. 5,758,327) describes an electronic requisition and authorization process including requisition reuls and a central computer linked to a number of companies. Hill (U.S. Patent No. 6,029,142) describes an electronic catalog system and method. Cameron et al. (U.S. Patent No. 5,832,459) describes a computerized source searching system and method for placing an order for at least one offer including a filtering mechanism and a selection mechanism. Burke (U.S. Patent No. 6,026,377) describes a system for allowing a consumer to purchase packaged goods including a product database and a retail space management system. Westrope et al. (U.S. Patent No. 5,968,110) describes an online-line interactive computerized catalog system and process for processing international transactions. Wren (U.S. Patent No.

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6,055,514) describes a system for shopping including electronically negotiating a price for the purchase of goods and services.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Kim whose telephone number is (571) 272-1392. The examiner can normally be reached on Monday - Friday 8am - 4:30pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NJK



JEFFREY D. CARLSON  
PRIMARY EXAMINER